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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Appeal case no: A207/2024

Case no: 304/2019

In the matter between:

ADV MC LOUW NO obo O O[...]

APPELLANT

And

ROAD ACCIDENT FUND

RESPONDENT

Neutral citation: *Louw NO obo O[...] v Road Accident Fund (A207/2024) [2026]*
ZAFSHC 95 (13 March 2026)

Coram: DAFFUE, REINDERS AND MOLITSOANE JJ

Heard: 15 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14h00 on 13 March 2026.

Summary: Appeal against award of loss of earnings capacity by single judge – the Road Accident Fund failed to call its educational psychologist who held a different view than the plaintiff's expert – held on appeal that there was no reason not to accept the expert evidence of the plaintiff's educational psychologist – appeal succeeded and higher amount awarded.

ORDER

1 Condonation is granted for the late filing of the appeal record and the appellant's heads of argument.

2 The appeal succeeds with costs inclusive of the costs of counsel on scale C.

3 The first sub-paragraph of paragraph 1.1 of the order of the court *a quo* is set aside and substituted with the following:

'1.1 The defendant is ordered to pay the plaintiff in his representative capacity the sum of R5 909 654 in respect of loss of earnings capacity and general damages, calculated as follows:

Loss of earning capacity:	R5 209 654
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General damages:	<u>R 700 000</u>
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Total:	R5 909 654'
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JUDGMENT

Daffue J (Reinders and Molitsoane JJ concurring)

Introduction

[1] Leave to appeal to the full bench has been granted. The cardinal issue to be considered in this appeal is the court *a quo*'s award in respect of a minor child's earning capacity following upon a brain injury sustained during a motor vehicle collision. The court *a quo* was of the opinion that the minor child would post-morbid be able to obtain a certificate after having finished grade 12. Such a finding is contrary to the evidence of the appellant's educational psychologist that the minor child would be able to complete his education in a special school which is equal to grade 9. Consequently, if a mainstream academic path is followed, the child would only be able to earn an income equivalent to that of unskilled workers.

The parties

[2] The appellant in this appeal and the plaintiff in the court *a quo* is Mr MC Louw, a member of the Free State Society of Advocates, who was appointed as curator *ad litem* for O[...] O[...], (the minor child). When the motor vehicle collision occurred on 24 May 2018 the minor child was 7 years and 4 months old.

[3] The respondent in this appeal and the defendant in the court *a quo* is the Road Accident Fund (RAF), a juristic person created in terms of s 2(1) of the Road Accident Fund Act 56 of 1996 (the RAF Act).

Order of the court a quo

[4] The court *a quo* relied on the calculations of the plaintiff's actuary, Mr Johan Sauer, save insofar as the contingency deduction of 20% in respect of the pre-morbid loss of earnings was increased to 25%. Having made the adjustment, paragraph 24 of the judgment reads as follows:

'The calculation would therefore be as follows as regards the pre-morbid future income: R7 479 080.00 – R1 869 770.00 (25% contingency) = R5 609 310.00. Bearing in mind the minor was only 7 years old at the time of the collision, the court allowed the higher contingency for the post-morbid projected income: R6 455 422 – R3 227 711.00 (50% contingency) = R3 227 711.00. That in turn result in the following calculations in respect of the minor's future loss of earnings R5 609 310.00 (pre-morbid income) – R3 227 711.00 (post-morbid income) = R2 381 599.00. This is the total amount I intend awarding to the plaintiff as representing the minor's loss of income.'

The relief sought

[5] The appellant did not appeal against the contingency deductions of 25% and 50% respectively applied by the court *a quo* regarding pre-morbid and post-morbid income. The sole issue on appeal is the court *a quo*'s acceptance that the minor would be able to, post-morbid, obtain a two- to three-year certificate after finishing school. The appellant submitted that Mr Sauer's actuarial certificate in terms whereof loss of earnings was calculated based on the completion of grade 9 post-morbid, should have been accepted by the court *a quo*. The post-morbid income calculated in this regard,

based on the average income of an unskilled worker, is a mere R399 656. Consequently, the loss, according to the Mr Sauer's certificate and based on contingencies of 20% and 50% respectively, amounted to R5 583 608.

The parties' agreement pertaining to the experts' joint minutes

[6] It was placed on record in the court *a quo* that the parties accepted that they were bound by the joint minutes of experts where the experts were in agreement with each other. Joint minutes were compiled by the industrial psychologists, Dr Strydom for the appellant and Ms Letsie for the RAF, the occupational therapists, Ms Booysen on behalf of the appellant and Ms Mogoane for the RAF, and the educational psychologists, Ms Roos on behalf of the appellant and Dr Du Plessis for the RAF. The parties went on trial on the basis that the post-morbid career path of the minor child was the sole basis for disagreement, bearing in mind the different opinions of the educational psychologists as set out in their joint minutes. The appellant called his educational psychologist, Ms Roos to testify. She assessed the minor child on two occasions and referred to her two reports, the first based on her original assessment on 11 February 2020 and the second pertaining to the follow-up assessment on 8 September 2023. In the first instance, the minor child was nine years and one month old and in the second instance, 12 years and eight months. When the appellant closed its case, the RAF's legal practitioner recorded that its educational psychologist's presence had not been secured, that she would not be testifying and consequently the RAF's case was closed.

Legal Principles

[7] Bearing in mind the cross-examination of Ms Roos and RAF's criticism of her evidence, it is apposite to refer to some legal principles pertaining to the evaluation of expert evidence. In *Michael and Another v Linksfeld Park Clinic (Pty) Ltd and Another*¹ the court held:

'That being so, what is required in the evaluation of such evidence is to determine whether and to what extent their opinions advanced are founded on logical reasoning. That is the thrust of

¹ *Michael and Another v Linksfeld Park Clinic (Pty) Ltd and Another* [2001] ZASCA 12; [2002] 1 All SA 384 (A); 2001 (3) SA 1188 (SCA) para 36.

the decision of the House of Lords in the medical negligence case of *Bolitho v City and Hackney Health Authority* [1997] UKHL 46; [1998] AC 232 (H.L.(E.)). With the relevant dicta in the speech of Lord Browne-Wilkinson we respectfully agree. Summarised, they are to the following effect.’ It is trite that expert witnesses are required to provide a factual basis for their conclusions and explain their reasoning. Although courts are not bound by the views of experts, they do make their ultimate decisions on issues on which the experts provide an opinion.

[8] In *Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd*,² the court commented as follows:

‘Lastly, the expert evidence lacked any reasoning. An expert’s opinion must be underpinned by proper reasoning in order for a court to assess the cogency of that opinion. Absent any reasoning, the opinion is inadmissible since it cannot be said to be an expert opinion. For all these reasons, the Prinsloos’ evidence was correctly disregarded by the court a quo.’

[9] In *Bee v Road Accident Fund*³ (*Bee*) the court reiterated the following:

‘The facts on which the expert witness expresses an opinion must be capable of being reconciled with all other evidence in the case. For an opinion to be underpinned by proper reasoning, it must be based on correct facts. Incorrect facts militates against proper reasoning and the correct analysis of the facts is paramount for proper reasoning, failing which the court will not be able to properly assess the cogency of that opinion. An expert opinion which lacks proper reasoning is not helpful to the court. (See also *Jacobs v Transnet Ltd t/a Metrorail* [2014] ZASCA 113; 2015 (1) SA 139 (SCA) paras 15 and 16; see also *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft Für Schädlingbekämpfung mbH* 1976 (3) SA 352 (A) at 371F.’

[10] In *Bee*⁴ the Supreme Court of Appeal pointed out that a court is not bound to the agreed opinion of experts and if it is found to be unreliable, it would be entitled to reject the joint opinion even if the parties accepted it. However, the parties should be forewarned of the court’s view.

² *Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd* [2015] ZASCA 164; 2016 (2) SA 586 (SCA); [2016] 2 All SA 351 (SCA) para 15.

³ *Bee v Road Accident Fund* [2018] ZASCA 52; 2018 (4) SA 366 (SCA) para 23.

⁴ *Ibid* paras 24 and 29-31.

Evaluation of the evidence and submissions

[11] In their joint minutes, the educational psychologists agreed that the minor child was vulnerable and that emotional support and guidance to him as well as sessions with his parents, would enable them to assist him in developing his full potential. They deferred to the other experts for their recommendations and in particular to the industrial psychologists for information on employment and remuneration pre- and post-morbid.

[12] The educational psychologists disagreed on the minor child's prospects to successfully conclude his schooling in a mainstream school. I quote:

'We Disagree

4.1 LR recommends: Olebogeng should be placed in an appropriate school [a remedial school like Martie Du Plessis] with vocational skills training with immediate effect as he is now 12 years of age and will not be enrolled next year.

4.2 Dr du Plessis opines that Olebogang should remain in a mainstream school where he would receive the best education to equip him for the future. Dr du Plessis also opines that vocational training is inappropriate as it relies heavily on physical abilities.'

[13] In their joint minutes, the two industrial psychologists referred to the joint minutes of the occupational therapists and stated the following in paragraph 6.1.2 of their joint minutes:

'Considering the assessment result as well as the results of the experts, we agree that [sic], would benefit from the multi-disciplinary approach to address all his difficulties holistically and he will, therefore, benefit from placement in a remedial school. The case manager should assist in this regard. It must be noted that remedial schools do have long waiting lists and placement should receive urgent attention and priority.'

[14] The industrial psychologists then dealt with the different approaches of the educational psychologists in their joint minutes and pointed out Ms Roos' criticism of Dr du Plessis' assessment. The industrial psychologists agreed in paragraph 6.3.5 that the

minor child 'is thus regarded a vulnerable scholar and future employee given the neuropsychological and neurobehavioural sequelae. With poor impulse control, it would be difficult for him to show the respect and follow instructions in the workplace, which pose a threat on his continued employment. Holistically, Olebogeng is at risk securing and maintaining employment. There are various uncertainties noted by the Occupational Therapists regarding his ability to perform unskilled type of work and he requires various interventions. He is however not seen to reach his pre-morbid potential and his continued employment falling in line with his residual work capacity is not at all guaranteed.'

Finally, they suggest that the minor child 'should be compensated for being regarded as a vulnerable scholar and future candidate in the open labour market, more specifically from a physical, cognitive and psychological perspective.'

[15] Ms Roos testified for the plaintiff. Notwithstanding cross-examination, her evidence and opinions are founded on logical reasoning. She questioned the evidential value of the school reports. In terms of these reports, the minor child continued to perform better than the average learners.

[16] It is common cause that the minor child suffers from a mild/moderate traumatic brain injury as found by Dr Mutyaba and consequently, the minor is unable to perform post-morbidly according to his educational potential due to manifestations of neurocognitive and neuropsychological deficits.

[17] Although the court *a quo* accepted that Ms Roos' opinion was founded on logical reasoning and therefore accepted such opinion, it did so with the caveat that it accepted 'the school report marking system as it was adapted to fit outcomes-based grading and was further adjusted during Covid-19.' It was not justified to come to this conclusion in the absence of any evidence whatsoever to substantiate this. Ms Roos was adamant that she had not only conducted two assessments over a period of nearly four years on

the minor child, but utilised the standard testing procedures used by educational psychologists throughout the country.

[18] The court *a quo* stated that Ms Roos was obtuse in answering questions during cross-examination pertaining to information contained in the report of Ms Herne, the clinical psychologist. She explained the different tests applied by clinical psychologists on the one hand and educational psychologists on the other. Although there might be attention deficits, it was never Ms Herne's opinion that the minor child was suffering from attention deficit disorder (ADD). Therefore, notwithstanding the criticism, no medical diagnosis was made of ADD.

[19] I have considered the judgment relied upon by the RAF's legal practitioner, to wit *P obo P v Road Accident Fund*.⁵ I accept that the minor's post-morbid income based on a grade 9 qualification appears to be extremely low. The RAF decided not to call Dr Du Plessis to present evidence under oath why the minor child would be able to obtain a grade 12 certificate in a mainstream school and go further to obtain at least a certificate. Furthermore, it accepted the various reports of Mr Sauer and his various assumptions. Consequently, there is no reason to reject the assumption based on the minor child's loss of earnings post-morbid, having completed grade 9 and be able to earn income of an unskilled worker.

[20] The court *a quo* correctly pointed out that the industrial psychologists accepted that, had the collision not occurred, the minor child would have achieved matric and a two- or three-year certificate thereafter. It clearly made a mistake in paragraph 23 of the judgment to refer to a submission by the plaintiff's counsel to the effect that a special school would not be suitable for the minor child. This was at all times the appellant's case that the minor child would not be able to proceed in a mainstream school. Consequently, the court *a quo*'s version that this fortified the court's view that the minor's potential with support, though not realized to its full potential, was not lost, was based on an incorrect statement.

⁵ *P obo P v Road Accident Fund* [2022] ZAGPJHC 734 (23 September 2022).

[21] The court *a quo* referred to Ms Roos' first report only in paragraph 23 of the judgment without considering the second report and/or her *viva voce* evidence. It is apparent from the first report that she was aware of the fact that the minor child had sustained a mild head injury, but at the stage when the first assessment was made and the report finalised, the report of the neurosurgeon, Dr Mutyaba, dated 16 March 2023 was not available. She only received this and other reports prior to the follow-up assessment on 8 September 2023.⁶ In her second report she stated on page 45 the following:

'Post-accident: He is still a learner with adequate average potential, but there is deterioration noted over time. He is even stronger practically inclined. He is barely coping with his academic demands according to his school reports, but with the identified fall-outs he will be unable to perform according to his potential as he progress to higher grades. The latter is indeed noted over time. From the available information and my assessment results [over almost four years' time] his post-accident performance and learning is negatively influenced on various spheres. He has unresolved trauma and he is rendered vulnerable post-accident. He needs special education, learning support and psychotherapy to be able to complete his vocational training to a grade 9 level [NQF1]. With his orthopaedic injuries and brain injury, several of the practical job opportunities are now excluded post-accident. He will struggle to find some form of employment in the open labour market with his practical aptitude and combined injuries and accident related sequelae.'

[22] Therefore, she recommended on page 46 of her report that the minor child be placed in a special school like Martie du Plessis to utilise his practical aptitude and to learn vocational skills. Furthermore, she indicated that the minor child was a candidate 'that needs a reader and scribe for tests and exams and would need 10 minutes extra for every hour of his paper for his grade 7 years until he is correctly placed.'

[23] Consequently, the court *a quo* misdirected itself in failing to accept that Ms Roos' expert opinion lacked proper reasoning and was based on facts which could be

⁶ See p 93 vol 1.

reconciled with all other evidence before it. In my view, a proper factual basis was presented for Ms Roos' conclusions and her reasoning was properly explained. The court *a quo* should have accepted that, especially insofar as the RAF failed to present the evidence of its educational psychologist, Dr Du Plessis. Ms Roos' expert opinion is also supported by the joint minutes of the occupational therapists contained in paragraphs 11 and 12 thereof.

Conclusion

[24] Consequently, the appeal should be upheld and the order of the court *a quo* set aside. The award in respect of loss of earnings should be calculated based on the actuarial certificate of the actuary, Mr Sauer. The pre-morbid future earnings of R7 479 080 should be decreased with a contingency of 25%, to wit R1 869 770 to arrive at the amount of R5 609 310, being the same amount arrived at by the court *a quo*. Contrary to the court *a quo*'s calculations of the post-morbid loss of earnings, an amount of R399 656, as calculated by Mr Sauer on the basis that the minor child would complete grade 9 only, should be deducted. If this is done the total loss of earnings amounts to R5 209 654. If the general damages of R700 000 awarded by the court *a quo*, which is not the subject of appeal, is added to this amount the total award should be substituted with the amount of R5 909 654.

Order

[25] Consequently, the following orders are granted:

- 1 Condonation is granted for the late filing of the appeal record and the appellant's heads of argument.
- 2 The appeal succeeds with costs inclusive of the costs of counsel on scale C.
- 3 The first sub-paragraph of paragraph 1.1 of the order of the court *a quo* is set aside and substituted with the following:

'1.1 The defendant is ordered to pay the plaintiff in his representative capacity the sum of R5 909 654 in respect of loss of earnings capacity and general damages, calculated as follows:

Loss of earning capacity:	R5 209 654
General damages:	<u>R 700 000</u>
Total:	R5 909 654'

J P DAFFUE
JUDGE OF THE HIGH COURT

I concur

C REINDERS
JUDGE OF THE HIGH COURT

I concur

P E MOLITSOANE
JUDGE OF THE HIGH COURT

Appearances

For the Appellant: D Marx
Instructed by: VZLR Inc c/o Du Plooy Attorneys, Bloemfontein

For the Respondent: C Bornman
Instructed by: Road Accident Fund, Bloemfontein.